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16 Attorneys for Plaintiffs
17 WHAM-O, INC.

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18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN JOSE DIVISION

21 WHAM-O, INC., a Delaware corporation,
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23 Plaintiff,
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25 v.
26
27 BIG TIME TOYS, LLC, a Tennessee limited
28 liability company,
29 Defendant.

Case No.: CV 08-0841 RMW (PVT)

**STIPULATION AND []
ORDER FOR CONSENT
INJUNCTION**

1 This Stipulation and Order for Consent Injunction is made between Plaintiff Wham-
2 O, Inc. (“Wham-O” or “Plaintiff”) and Defendant Big Time Toys (“Big Time” or
3 “Defendant”), by and through their counsel of record with reference to the following:

4 WHEREAS, Wham-O owns a trademark for the color yellow on water slide toys, as
5 evidenced in U.S. Trademark Registration No. 1,432,069 and the goodwill associated
6 therewith (“Yellow Water Slide Trademark”);

7 WHEREAS, Wham-O’s Yellow Water Slide Trademark has been held valid by the
8 United States District Court for the Central District of California in *SLB Toys USA, Inc. v.*
9 *Wham-O, Inc.*, CV 06-1382 RSWL (CWx) (C.D. Cal. Dec. 4, 2007) (the “Judgment”);

10 WHEREAS, on or about February 6, 2008 WHAM-O filed a complaint entitled
11 *Wham-O, Inc. v. Big Time Toys, LLC*, in the United States District Court for the Northern
12 District of California, Case No. CV 08-0841 PVT (“the Action”), in which Wham-O
13 alleged, *inter alia*, trademark infringement of Wham-O’s Yellow Water Slide Trademark in
14 violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114, trademark dilution in
15 violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), false designation of
16 origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and unfair
17 competition in violation of the common law of the State of California concerning certain
18 water slide toys designed, manufactured, distributed, marketed, advertised, sold, offered for
19 sale by Big Time to retailers;

20 WHEREAS, Big Time acknowledges the ownership of the Yellow Water Slide
21 Trademark in Wham-O, agrees to do nothing inconsistent with such ownership and agrees
22 not to challenge the title of Wham-O to the Yellow Water Slide Trademark or the
23 Judgment;

24 WHEREAS, the Parties each now desire to resolve, compromise and settle the
25 Action; and
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1 WHEREAS, the Parties agree that a consent injunction relating to the manufacture,
2 distribution, offering for sale or sale by Defendant of the materials depicted in Exhibit 1 is a
3 necessary and material component of the settlement agreement;

4 NOW, THEREFORE, Plaintiff and Defendant, by and through their counsel of
5 record, hereby agree and stipulate that this Consent Injunction shall be entered as a
6 permanent injunction in this action as follows:

7 1. Defendant Big Time, and all of its officers, directors, employees, agents,
8 successors and assigns, and all persons in active concert or participation with any of them
9 are hereby enjoined from further manufacturing, distribution, marketing, advertising,
10 offering for sale or sale of the packaging depicting a yellow water slide depicted in Exhibit
11 1;

12 2. Big Time has certified that all specimens of the packaging depicting a yellow
13 water slide in Exhibit 1 in Big Time's possession, custody, and/or control shall be destroyed
14 by September 18, 2008, and within ten business days thereafter supply Wham-O with an
15 affidavit confirming such destruction.

16 3. Defendant Big Time, and all of its officers, directors, employees, agents,
17 successors, assigns, and all persons in active concert or participation with any of them are
18 hereby enjoined from any future infringement of Trademark Registration No. 1,432,069,
19 including, but not limited to, manufacturing, distribution, marketing, advertising, offering to
20 sell or selling the yellow water slide toy depicted on the packaging in Exhibit 1; and/or
21 using the color yellow on the sliding surfaces of water slide toys, or packaging or
22 advertising thereof, or any mark similar thereto or likely to cause confusion therewith in the
23 sale, offering for sale, importation, distribution or advertising of water slide toys, at any
24 locality in the United States.

25 4. The Court shall retain jurisdiction over this action to entertain such further
26 proceedings and to enter such further orders as may be necessary or appropriate to
27 implement and/or enforce the provisions of this Consent Injunction.

1 STIPULATED AND AGREED.

2 Dated: September 25, 2008

HELLER EHRMAN LLP

3
4 By: /s/ Annette L. Hurst
ANNETTE L. HURST

5 Attorneys for Plaintiff
6 WHAM-O, INC.

7
8 Dated: September 25, 2008

RILEY WARNOCK & JACOBSON, PLC

9
10 By: /s/ John W. Peterson
JOHN W. PETERSON

11 Attorneys for Defendant
12 BIG TIME TOYS, LLC

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14 IT IS SO ORDERED.

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16 Dated: 9/30/08

By: *Ronald M. Whyte*

17 The Honorable Ronald M. Whyte
18 United States District Court Judge
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ATTESTATION OF E-FILED SIGNATURE

I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this e-filed document.

By /s/ Annette L. Hurst
ANNETTE L. HURST

Attorneys for Plaintiff
WHAM-O, INC.